

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH POPE,

Plaintiff,

DECISION AND ORDER

03-CV-6445L

v.

C.O.L. SALMON, et al.,

Defendants.

Plaintiff, Joseph Pope (“Pope”), a former inmate who had been confined with the Department of Correctional Services, failed to appear for his scheduled jury trial on July 30, 2007. Plaintiff’s case is, therefore, dismissed with prejudice.

On April 12, 2007, the Court held a telephone conference with Pope and Assistant Attorney General Emil Bove concerning the status of the case. Plaintiff indicated a willingness to settle the case and the demand was presented to Assistant Attorney General Bove. I scheduled trial for Monday, July 30, 2007 and scheduled a final pretrial conference for Monday, July 23, 2007. Pope was advised that he must appear for both.

On July 2, 2007, I issued a Revised Pretrial Order confirming once again that trial was scheduled for July 30, 2007 with the pretrial on July 23, 2007 at 11:30 a.m. Plaintiff was advised that he must attend the pretrial conference in person and also was advised that he needed to notify the Court as to whether he intended to attend the pretrial conference. Plaintiff was specifically advised that if he failed to attend that conference, the case could be dismissed.

Since my telephone conference with plaintiff on April 12, 2007, I have received no direct communications from the plaintiff. When Pope failed to appear for the pretrial conference on July 23, 2007, I asked my courtroom deputy to contact Pope utilizing the last known telephone number that he had sent to the Court. She made that call but the telephone number was no longer in service.

At some point prior to trial, Pope apparently contacted an attorney in Rochester, New York in an attempt to settle the case. The Assistant Attorney General refused to settle. That attorney did not intend to represent Pope at trial, and she later advised the Court, by letter dated July 27, 2007, that when she attempted to telephone Pope she received the same pre-recorded message that the telephone was out of service.

Based on all of the above, it is clear that Pope has failed to comply with the Court's order scheduling both trial and a pretrial conference in the matter. In light of that, Pope has clearly failed to prosecute this action and to comply with the orders of the Court and, therefore, the case must be dismissed pursuant to the FED. R. CIV. P. 41(b).

CONCLUSION

Plaintiff's complaint is dismissed with prejudice.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
July 31, 2007.